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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/982,548

10/18/2001

Dongfang Liu

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23628 7590 10/16/2008
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EXAMINER

MCINTOSH III, TRAVISS C

ART UNIT

PAPER NUMBER

1623

MAIL DATE

DELIVERY MODE

10/16/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/982,548	Applicant(s) LIU ET AL.	
	Examiner TRAVISS C. MCINTOSH III	Art Unit 1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 58, 116-121, 204, 206-209, 211-213, 223-231 and 239-252 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 58, 116-121, 204, 206-209, 211-213 and 223-231 is/are allowed.
- 6) ☒ Claim(s) 239-252 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

The Amendment filed 7/17/08 has been received, entered into the record, and carefully considered. The following information provided in the amendment affects the instant application by:

Claims 1-57, 59-115, 122-203, 205, 210, 214-222 and 232-238 have been canceled.

Remarks drawn to rejections of Office Action mailed 6/1/2007 include:

102(b) rejection: which has been maintained for reasons of record.

An action on the merits of claims 58, 116-121, 204, 206-209, 211-213, 223-231, and 239-252 is contained herein below. The text of those sections of Title 35, US Code which are not included in this action can be found in a prior Office action.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/17/08 has been entered.

Claim Rejections - 35 USC § 102

The rejection of claims 239-252 under 35 U.S.C. 102(b) as being anticipated by Edelman et al. (US 5,527,532) is maintained for reasons of record.

The '532 patent discloses dry unformulated heparin particles having a diameter of less than 180 microns (see sentence bridging columns 6-7). Since the Office does not have the facilities for preparing the claimed materials and comparing them with prior art inventions, the burden is on Applicant to show a novel or unobvious difference between the claimed product and the product of the prior art. See *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald et al.*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). It is noted that the particles made by the '532 patent would be seen to have inherently contained particles which would have met the limitations instantly claimed.

Applicants argue that the '532 patent also teaches that the heparin particles are added to an EVAc solution, thus making it a formulated composition, and not an unformulated one as set forth in the instant claims. However, the '532 patent sets forth both an unformulated composition and a formulated composition. They disclose the sieved heparin particles with diameters less than 180 microns before it is added to the EVAc solution as well as after it is added. As such, applicants arguing that the heparin is formulated is not found to be convincing.

Conclusion

Claims 58, 116-121, 204, 206-209, 211-213, and 223-231 are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRAVISS C. MCINTOSH III whose telephone number is (571)272-0657. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Traviss C McIntosh III/
Art Unit 1623
October 14, 2008